

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2008-031021-001 DT

08/09/2013

HON. SHERRY K. STEPHENS

CLERK OF THE COURT  
C. McCain  
Deputy

STATE OF ARIZONA

JUAN M MARTINEZ

v.

JODI ANN ARIAS (001)

KIRK NURMI  
JENNIFER L WILLMOTT

RULING

The Court has considered the Motion to Vacate Aggravation Phase Verdict Pursuant to Rule 24.2 Arizona Rules of Criminal Procedure filed on June 21, 2013, and the Objection to Motion to Vacate Aggravation Phase Verdict Pursuant to Rule 24.2 Arizona Rules of Criminal Procedure filed on July 8, 2013. Defendant requests the court vacate the jury's verdict finding that the aggravating factor that murder was committed in an especially cruel manner had been proven.

The Court finds the motion to vacate the judgment under Rule 24.2(a), *Arizona Rules of Criminal Procedure*, is not yet ripe. Judgment has not been entered in this case because a mistrial was entered for the penalty phase. Judgment after a conviction is entered at the time of sentencing. Rule 26.2(b)(c), *Arizona Rules of Criminal Procedure*. See also *State v. Saenz*, 197 Ariz. 487, 4P.3d1030 (App. 2000).

Regarding the substantive issues raised in the motion, the defendant asserts that the judicially-created definitions of the term "especially cruel" in A.R.S. §13-751(F)(6) violates the separation of powers doctrine.

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The Arizona Constitution divides the powers of government into three departments and provides that “no one of such departments shall exercise the powers properly belonging to either of the others.” Ariz. Const. Art. 3. Although the purpose of the doctrine of the separation of powers is to protect one branch of government against the overreaching of any other branch, common boundaries exist among the branches, and the doctrine does not require a “hermetic sealing off” of the branches of government one from another. *State v. Prentiss*, 163 Ariz. 81, 84-85, 786 P.2d 932, 935-36 (1989). More than one department may have a legitimate and constitutionally permitted involvement in the same area and department roles legitimately overlap in the attempt to prevent and punish criminal activity. *State v. Gilfillan*, 196 Ariz. 396, 998 P.2d 1069 (App. 2000); *State v. Ramsey*, 171 Ariz. 409, 413, 831 P.2d 408, 412 (App.1992).

Although “[u]nder the doctrine of ‘separation of powers’ the legislature alone possesses the lawmaking power and while it cannot completely delegate this power to any other body, it may allow another body to fill in the details of legislation already enacted.” *State v. Ariz. Mines Supply Co.*, 107 Ariz. 199, 205, 484 P.2d 619, 625 (1971). Thus, the legislature may delegate “the job of formulating ... guideline[s] to an agency that is likely better equipped to undertake the task.” *Griffith Energy, L.L.C. v. Ariz. Dep’t of Revenue*, 210 Ariz. 132, 137, ¶24, 108 P.3d 282, 287 (App. 2005)(citing *Arizona Mines*, id.). Arizona appellate courts have long recognized that “[a]lthough the Arizona Constitution created separate and distinct branches of government, ... an unyielding separation of powers is impracticable in a complex government, and some blending of powers is constitutionally acceptable.” *Cook v. State*, 230 Ariz. 185, 281 P.3d 1053 (App. 2012)(quoting *Andrews v. Willrich*, 200 Ariz. 533, 535, ¶7, 29 P.3d 880, 882 (App. 2001)).

In reviewing a separation of powers claim, courts consider the following factors: (1) the essential nature of the power exercised by the branch alleged to have usurped the power of another branch; (2) the degree of control that branch assumes in exercising the power of the other branch; (3) the objective of that branch's exercise of power; and (4) the practical consequences of the action. *Cook*, 230 Ariz. at ¶15.

The Arizona Supreme Court’s narrowing definitions of the terms “heinous, cruel or depraved” do not usurp the function of the legislature. First, the legislature has authorized the judicial branch to define statutory terms. A.R.S. §1-211 provides:

A. The rules and the definitions set forth in this chapter shall be observed in the construction of the laws of the state unless such construction would be inconsistent with the manifest intent of the legislature.

B. Statutes shall be liberally construed to effect their objects and to promote justice.

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C. The rule of the common law that penal statutes shall be strictly construed has no application to these Revised Statutes. Penal statutes shall be construed according to the fair import of their terms, with a view to effect their object and to promote justice.

A.R.S. §13-104 also provides that “[t]he general rule that a penal statute is to be strictly construed does not apply to this title, but the provisions herein must be construed according to the fair meaning of their terms to promote justice and effect the objects of the law, including the purposes stated in section 13-101.” *See also*, A.R.S. §1-213 (“Words and phrases shall be construed according to the common and approved use of the language. Technical words and phrases and those which have acquired a peculiar and appropriate meaning in the law shall be construed according to such peculiar and appropriate meaning.”).

Second, there is a strong presumption in favor of the constitutionality of a legislative enactment, and in interpreting a statute the courts should, if possible, give the statute a constitutional construction. *Mardian Constr. Co. v. Superior Court*, 113 Ariz. 489, 557 P.2d 526 (1976). It is the Supreme Court’s duty to uphold statutes, if their language will permit, even though the statute may not be “artfully drawn.” *State v. Grijalva*, 111 Ariz. 476, 533 P.2d 533, cert. denied, 423 U.S. 873 (1975). Judicial interpretation adds meaning to a statute as certainly as if the words were placed there by the legislature. *State v. Book-Cellar, Inc.*, 139 Ariz. 525, 679 P.2d 548 (App. 1984); *State v. Bateman*, 113 Ariz. 107, 547 P.2d 6 (1976).

The Arizona Supreme Court’s narrowing construction of (F)(6) was necessary in order for this aggravating circumstance to survive constitutional scrutiny. *See, Walton v. Arizona*, 497 U.S. 639, 654 (1990), *reversed on other grounds by Ring v. Arizona*, 536 U.S. 584 (2002)(holding the “especially heinous, cruel, or depraved” language is facially vague, but stating that the Arizona Supreme Court had given adequate “substance to the operative terms” for the construction of the aggravating circumstance to meet constitutional requirements). By narrowly defining (F)(6)’s terms, the Supreme Court effectuated the legislature’s intent that an individual who commits first-degree murder “in an especially heinous, cruel or depraved manner” be eligible for the death penalty.

Finally, the legislature is presumed to be aware of court decisions interpreting statutory language and to approve those decisions when it retains the language. *State v. Fell*, 210 Ariz. 554, 561, 115 P.3d 584, 601 (2005)(“Once published, our interpretation becomes part of the statute”); *Galloway v. Vanderpool*, 205 Ariz. 252, 256, 69 P.3d 23 (2003)(same). The statutory terms “heinous, cruel or depraved” in (F)(6) have not changed since the enactment of Arizona’s death penalty scheme in 1973. Therefore, the legislature is presumed to have accepted the Supreme Court’s definitions of these terms.

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The Arizona Supreme Court did not create a new crime of “capital murder” by crafting a narrowing construction of “especially cruel” in order to render A.R.S. §13-751(F)(6) constitutional. Rather, it exercised its judicial power to effectuate the legislature’s intent. This proper exercise of judicial power did not violate the separation of powers doctrine.

IT IS ORDERED denying defendant’s Motion to Vacate Aggravation Phase Verdict Pursuant to Rule 24.2 Arizona Rules of Criminal Procedure, filed July 8, 2013.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.